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**BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA**

Order Instituting Rulemaking to Oversee the
Resource Adequacy Program, Consider
Program Reforms and Refinements, and
Establish Forward Resource Adequacy
Procurement Obligations.

Rulemaking 21-10-002
(Filed October 7, 2021)

**REPLY COMMENTS OF PACIFIC GAS AND ELECTRIC COMPANY (U 39 E) ON
PHASE 1 PROPOSALS AND WORKSHOP REGARDING CENTRAL
PROCUREMENT ENTITY STRUCTURE AND PROCESS**

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Dated: January 13, 2022

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I. INTRODUCTION

Pursuant to the *Assigned Commissioner’s Scoping Memo and Ruling*, dated December 2, 2021, as amended by the *Email Ruling Granting Motion for Extension of Time, in Part, and Modifying the Phase 1 Schedule*, dated December 10, 2021 (together, the “Scoping Memo”), and in accordance with the Rules of Practice and Procedure of the California Public Utilities Commission (“Commission”), Pacific Gas and Electric Company (“PG&E”) hereby provides these reply comments to opening comments filed by various parties on January 4, 2022, regarding Phase 1 proposals and the workshop on such proposals facilitated by the Commission’s Energy Division.

PG&E appreciates the Commission’s careful consideration of various critical central procurement entity (“CPE”)-related proposals in this expedited phase of the implementation track. As demonstrated by opening comments, it is imperative for the Commission to adopt critical modifications and refinements proposed by PG&E related to (1) self-shown resources, (2) the levelized fixed cost bidding requirement associated with utility-owned generation and contracted resources, (3) forecasting of CPE procurement costs in the annual Energy Resource Recovery Account (“ERRA”) forecast proceeding, (4) application of the requirement for investor-owned utility (“IOU”) resources procured by the CPE to be reclassified from their existing cost recovery mechanism designations to the cost allocation mechanism (“CAM”), (5) CPE confidentiality rules, (6) the

resource adequacy (“RA”) timeline, and (7) the selection criteria and data submittal requirements in Decision 20-06-002.

In these reply comments, PG&E replies to opening comments of other parties to explain further why:

- 1) the Commission should adopt PG&E’s CAM-based self-showing proposal in order to properly ensure resource performance and alignment with cost causation principles (Section II.A);
- 2) it is inappropriate for the Commission to establish specific ERRA application or scheduling requirements in this proceeding (Section II.B);
- 3) the Commission should adopt PG&E’s proposal for documenting self-shown resources through a binding notice of intent rather than a standardized contract (Section II.C);
- 4) the Commission should adopt PG&E’s confidentiality proposal (Section II.D);
- 5) the Commission should reject proposals for a new and unwarranted system RA waiver (Section II.E);
- 6) the Commission should adopt PG&E’s modified RA timeline proposal as the most balanced approach (Section II.F);
- 7) the Commission should reject proposals to reconsider the residual procurement framework (Section II.G);
- 8) the Commission should direct the bundled procurement arm of the CPEs to submit Tier 2 advice letters proposing an alternative to the levelized fixed cost bidding requirement (Section II.H); and
- 9) the Commission should not adopt specific implementation details proposed by Calpine Corporation (“Calpine”) that could undermine the CPE’s purpose (Section II.I).

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II. PG&E’S REPLY COMMENTS

A. The Structure for Self-Shown Resources Must Ensure LSEs’ Performance and Adhere to Cost Causation Principles

The opening comments of Southern California Edison Company (“SCE”),¹ the Public Advocates Office of the Commission (“CalAdvocates”),² the California Independent System Operator Corporation (“CAISO”),³ the Alliance for Retail Energy Markets (“AReM”),⁴ the California Community Choice Association (“CalCCA”),⁵ the Environmental Parties,⁶ Middle River Power LLC (“MRP”),⁷ Calpine,⁸ and PG&E⁹ each address various proposals aimed at improving the self-showing process and ensuring that self-showing load serving entities (“LSEs”) submit RA plans to the Commission and the CAISO that include their self-shown resources.

SCE,¹⁰ CalAdvocates,¹¹ AReM,¹² and MRP¹³ either supported or noted the importance of ensuring the performance of self-shown resources, with AReM specifically supporting PG&E’s proposed CAM-

¹ *Opening Comments of Southern California Edison Company (U 338-E) on Phase 1 Proposals and Workshop*, dated January 4, 2022 (“SCE Phase 1 Opening Comments”), pp. 2-4.

² *Comments of the Public Advocates Office on Phase 1 Proposals*, dated January 4, 2022 (“CalAdvocates Phase 1 Opening Comments”), pp. 10-13.

³ *Opening Comments on Resource Adequacy Implementation Track Phase 1 Proposals of the California Independent System Operator Corporation*, dated January 4, 2022, pp. 1-4.

⁴ *Comments of the Alliance for Retail Energy Markets on Phase 1 Proposals to Address Issues Regarding the Central Procurement Entity*, dated January 4, 2022 (“AReM Phase 1 Opening Comments”), pp. 3-5.

⁵ *California Community Choice Association’s Comments on Assigned Commissioner’s Scoping Memo and Ruling*, dated January 4, 2022 (“CalCCA Phase 1 Opening Comments”), pp. 5-9.

⁶ The “Environmental Parties” are California Environmental Justice Alliance and Union of Concerned Scientists. *California Environmental Justice Alliance and Union of Concerned Scientists Comments on the Workshop and Proposals to Modify the Central Procurement Entity*, dated January 4, 2022 (“Environmental Parties Phase 1 Opening Comments”), pp. 1-5.

⁷ *Middle River Power LLC Comments on Phase 1 Proposals*, dated January 4, 2022 (“MRP Phase 1 Opening Comments”), pp. 7-10, 14-18.

⁸ *Comments of Calpine Corporation on Phase 1 Proposals and Workshop*, dated January 4, 2022, pp. 3-4.

⁹ *Opening Comments of Pacific Gas and Electric Company (U 39 E) on Phase 1 Proposals and Workshop Regarding Central Procurement Entity Structure and Process*, dated January 4, 2022 (“PG&E Phase 1 Opening Comments”), pp. 10-14.

¹⁰ SCE Phase 1 Opening Comments, p. 2 (“SCE shares PG&E’s concern regarding non-performance of self-showing resources as well as the need to balance reliability of such resources with incentivizing LSEs to participate by self-showing local resources they don’t bid to the CPE.”).

¹¹ See CalAdvocates Phase 1 Opening Comments, pp. 10-13

¹² See AReM Phase 1 Opening Comments, p. 4.

¹³ See MRP Phase 1 Opening Comments, pp. 8, 18.

based approach for self-shown resources as an appropriate mechanism to encourage compliance by self-showing LSEs¹⁴ and CalAdvocates supporting PG&E's proposal so long as it is modified to include the handling of self-shown resources that began as competitive offers.¹⁵

MRP's comments help to explain why performance by self-showing LSEs is so critical to the CPE procurement process outlined in Decision 20-06-002, given that the CPE would likely be unable accurately to perform its required evaluation related to the effectiveness of the overall portfolio if the CPE cannot rely on a self-shown resource.¹⁶ Replacement of shown resources appears incompatible with the effectiveness evaluation contemplated in Decision 20-06-002 unless the replaced resource has the exact same characteristics as the shown resource. Following the accounting of any self-shown local resources, the CPE evaluates the entire local RA portfolio and makes procurement decisions to mitigate collective local RA deficiencies. Thus, making a reliability-based commitment of self-shown local resources to a Commission-designated CPE is not a trivial matter.

Consequently, the Commission's rules must establish a structure for self-shown resources that ensures performance by LSEs in order for the CPE to achieve the stated purpose of the hybrid procurement structure: ". . . to secure a portfolio of the most effective local resources, use [the CPE's] purchasing power in constrained local areas, mitigate the need for costly backstop procurement in certain local areas, and ensure a least cost solution for customers and equitable cost allocation."¹⁷ Simply stated, rules that fail to require performance by showing LSEs appear to undermine the CPE procurement process and could result in significant harm to local reliability.

¹⁴ AReM Phase 1 Opening Comments, p. 4 ("If AReM's understanding is correct, AReM supports this multi-step approach, which should encourage compliance by self-showing LSEs, particularly when coupled with the proposal by the California Independent System Operator ('CAISO') to impose Capacity Procurement Mechanism ('CPM') charges on self-showing LSEs that fail to perform.").

¹⁵ CalAdvocates Phase 1 Opening Comments, p. 13.

¹⁶ See MRP Phase 1 Opening Comments, p. 18 ("Unless the replaced resource has the same effectiveness factors as the original resource, replacing resources would change the overall effectiveness of resources procured to meet local reliability requirements.").

¹⁷ Decision 20-06-002, p. 26.

While the Commission's rules must require performance by self-showing LSEs, PG&E agrees with CalCCA that it is also important for LSEs that have self-procured local resources to participate in the voluntary CPE process.¹⁸ In fact, PG&E proposed various enhancements to the hybrid central procurement framework to promote increased participation. That said, proposals for increased participation are not helpful without ensuring the performance of self-showing LSEs, as described above.

CalCCA takes issue with PG&E's proposed CAM-based approach for shown resources (which will encourage performance by self-showing LSEs by adjusting CAM credits, as applicable) because, CalCCA argues, it "will further disincentivize LSEs from self-showing."¹⁹ In explaining the purported flaws with PG&E's proposal, CalCCA states that under PG&E's CAM-based approach, if a self-shown resource is on planned outage after the LSE has voluntarily committed the resource to the CPE, the LSE could face backstop costs for events outside of its control if it fails to follow the CAISO's rules regarding substitution.²⁰ But CalCCA acknowledges that this is also the case today under an LSE-based structure when a resource committed by an LSE to the CAISO goes on outage after the commitment occurs.²¹ LSEs must follow CAISO's rules regarding substitution, or they face the consequences of not contributing to reliability.²² CalCCA attempts to differentiate the CPE scenario from the current LSE-based local RA mechanism by suggesting that the LSE previously "directly benefited from the showing" and "kn[e]w[] ahead of time that if the resource did not show up in an individual month, the LSE would be required to

¹⁸ CalCCA Phase 1 Opening Comments, pp. 5-9.

¹⁹ *Id.*, p. 6.

²⁰ *Ibid.*

²¹ *Ibid.*

²² In the current LSE-based structure, if a resource that was used to meet local RA requirements does not "perform" (e.g., show up on the LSE's RA plan), then the LSE would need to procure additional local resources to meet its local RA requirements. Moreover, if that local resource was on a planned outage, it is PG&E's understanding that the supplier – not the LSE – would be required to provide substitution capacity to mitigate from CAISO cancelling the planned outage. Notably, under the CAISO's planned outage substitution obligation process, the replacement/substitution capacity for planned outages can be covered by a system resource and does not require a like-for-like resource as asserted by CalCCA. As a result, it is not clear to PG&E how the CPE structure has fundamentally altered the risk that LSEs bear today under an LSE-based structure.

provide and [*sic*] alternative resource or pay the CAISO backstop costs since the obligation was on the individual LSE from the start.”²³ These arguments are unpersuasive. First, LSEs directly benefit from voluntarily showing their resources to the CPE by: (1) retaining the system and flexible attributes for their own use (e.g., perhaps for other substitution purposes), and (2) reducing the total costs incurred by the CPE, and, therefore, reducing costs to their own customers. Second, self-showing LSEs know when they commit their resource to the CPE that if their resource does not show up in an individual month, the scheduling coordinator for the *supplier* (not the LSE) will be required under the CAISO rules to substitute or bear the consequences of not doing so. Thus, CalCCA fails to demonstrate that the CPE structure, or PG&E’s proposed CAM-based approach to self-shown resources, creates an unjustifiable or increased risk of backstop procurement costs associated with substitution requirements.

As referenced above, PG&E also disagrees with parties suggesting that there is little to no incentive to voluntarily commit self-procured local resources. An LSE that voluntarily commits its self-procured local resource retains the full value of that resource. Other LSEs do not have the ability to use that resource towards their RA obligations or otherwise. This is a critical element of the hybrid procurement framework that continues to provide procurement flexibility to all LSEs. While an LSE may elect the “do nothing” approach and not voluntarily commit the resource to the CPE, there remains a strong incentive to do so. In fact, if an LSE voluntarily commits its self-procured local resource to the CPE, this will result in lowering the total procurement costs incurred by the CPE, ultimately lowering that LSE’s procurement costs. By contrast, if an LSE does not voluntarily commit its self-procured local resource, the CPE may have to procure more expensive existing or new resources. Those costs would be allocated to all LSEs, including the LSE that chose not to self-show.

²³ CalCCA Phase 1 Opening Comments, p. 6.

Finally, MRP's comments address issues related to allocation of CAISO backstop procurement costs (i.e., capacity procurement mechanism ("CPM") costs).²⁴ Without rehashing its proposals, PG&E encourages the Commission to consider carefully the potential for cost shifts created by the self-showing concept due to potential non-performance of a single LSE or multiple LSEs. While PG&E agrees with MRP that the Commission lacks the jurisdiction to direct the CAISO to revise its CPM cost allocation rules, the Commission has authority to establish the requirements for a self-showing LSE under the Commission's RA program, including the consequences (e.g., penalties under the RA program) a self-showing LSE may face for failing to perform the actions outlined for self-showing LSEs in Commission decisions. Absent any clear requirements, enforcement mechanisms, or Commission decisions as to how the costs associated with CAISO backstop procurement can be directly allocated to any non-performing self-showing LSEs, the CPE may be in the position of having to socialize those costs across all customers, resulting in an unfair cost shift that may violate cost causation principles as a matter of law. This is concerning both with respect to self-showing LSEs within the relevant CPE's service area and those outside of the relevant CPE's service area. As CalAdvocates explained:

[avoiding backstop costs if the LSE's self-shown resource does not perform or is not shown on the LSE's RA supply plans as a system and/or flexible RA resource] could lead to customer indifference issues as LSEs would be paying for a deficiency created by an LSE outside the TAC area who would not bear any cost. LSEs may even begin to prefer to meet their system RA requirements through local RA resources outside of their TAC areas since the LSE wouldn't face the risk of a local backstop cost if the LSE shows those resources to the area CPE.²⁵

Accordingly, the Commission's rules should also establish a structure for self-shown resources that ensures equitable cost allocation in the event that non-performance by a showing LSE results in incurrence of CPM costs by the CPE.

²⁴ MRP Phase 1 Opening Comments, pp. 16-17.

²⁵ CalAdvocates Phase 1 Opening Comments, p. 12.

For all of these reasons, PG&E continues to support the adoption of its CAM-based proposal for self-shown resources, as it appropriately: (1) addresses the issue of CPM cost recovery by authorizing the Commission, in consultation with the CPE, to inform the CAISO as to which LSE the CPM costs should be allocated due to an individual deficiency stemming from non-performance by a self-showing LSE, (2) establishes an enforcement mechanism to ensure performance of self-showing LSEs by adjusting CAM credits as applicable, (3) mitigates the issue of LSE participation by eliminating the contractual agreement between the LSE and CPE, and (4) maintains the fundamental structure of the hybrid procurement framework.

B. Broad Modifications to the ERRA Forecast Application Requirements and Proceeding Schedule are Inappropriate

In opening comments, CalAdvocates views PG&E's proposal to forecast and implement CPE-related procurement costs in the IOUs' ERRA forecast proceeding as consistent with both Decision 20-06-002 and the fact that forecasting and recovering CAM costs occurs through that annual rate-setting proceeding.²⁶ PG&E appreciates CalAdvocates' recognition that annual ERRA forecast proceedings are fundamentally compatible with the forecasting of CPE-related costs for recovery in CAM rates. PG&E is concerned, however, with CalAdvocates' recommendations that: (1) forecasts of the CPE's solicitation and associated rate impacts be provided in a supplemental ERRA forecast application; and (2) the Commission make specific modifications to the individual IOUs' ERRA forecast proceeding schedule in *this proceeding* to accommodate stakeholder review of CPE-related information.²⁷

First, PG&E is not clear what CalAdvocates' recommendation for a supplemental ERRA forecast *application* would entail. The Commission's Rules of Practice and Procedure do not provide for supplements to applications. Indeed, the Commission's requirements for applications that seek authority

²⁶ *Id.*, pp. 8-9.

²⁷ *Id.*, p. 9 (recognizing the magnitude of potential CPE-procurement costs and indicating that stakeholder review of information supporting CPE-related costs would require supplemental testimony).

to increase rates, typically applicable to PG&E's annual ERRA forecast proceeding, are specified in Commission's Rules of Practice and Procedure Rule 3.2 and provide for no such supplement. Moreover, modifications to the Commission's Rules of Practice and Procedure are not in scope in this proceeding. Further, if CalAdvocates recommends that PG&E's ERRA forecast application be amended following the availability of certain information relevant to the CPE, *amendments* to applications must be filed by the applicant prior to the issuance of the scoping memo in the proceeding under Rule 1.12(a) and can cause procedural delay pursuant to Rule 1.12(b). As a result, *amendments* to applications are likely incompatible with the Commission's and stakeholders' needs for an expedient ERRA forecast final decision. Regardless, PG&E clarifies that supplements or amendments to PG&E's annual ERRA forecast application to consider CPE-related costs are unnecessary. PG&E's proposal is to forecast annual CPE-related costs as part of its initial ERRA forecast application, and to update its testimony to reflect CPE-related cost changes to reflect market conditions closer to the beginning of the prompt year, consistent with any other forecast updates by procurement category considered as part of its annual ERRA proceeding.

Second, the Commission should not order specific schedule changes applicable to the IOUs' ERRA forecast proceedings in this proceeding given the complexities of ERRA forecast proceeding schedules. CalAdvocates correctly observes that the Commission is considering modifications to the IOUs' ERRA forecast schedules as part of Rulemaking 17-06-026, including changes to the IOUs' initial application filing dates and the fall release date applicable to the market price benchmarks used in the calculation of various nonbypassable charges. As CalAdvocates itself recognizes, however, ERRA forecast proceedings are necessarily compressed for all stakeholders, which may render specific schedule changes unworkable for stakeholders. For example, October supplemental testimony may conflict with evidentiary hearings, rebuttal testimony, and other procedural milestones. As such, PG&E recommends that specific scheduling issues concerning CPE procurement be left to the expert discretion of the

Assigned Commissioner and Administrative Law Judge presiding over PG&E's annual ERRA forecast proceeding. The stakeholders to this limited RA proceeding cannot foresee the exact issues associated with updates to CPE and other testimony and scheduling complexities that may arise in future ERRA proceedings. Accordingly, it is unwarranted for the Commission to establish a specific scheduling requirement in this proceeding.

C. The Commission Should Eliminate the Use of Contractual Agreements for Self-Shown Resources

In its opening comments, MRP opposes the elimination of contracts for self-shown resources and, instead, recommends that the Commission require the CPEs to hold workshops with parties to develop a standardized self-showing contract.²⁸ PG&E disagrees. Throughout this proceeding, parties have suggested that a contractual agreement is unattractive to self-showing LSEs that otherwise would have no liability associated with their self-procured local resource. In addition, PG&E has expressed concerns that it is not clear that such an agreement can provide timely, appropriate, and enforceable remedies for LSE failures.²⁹ Accordingly, PG&E agrees with CalAdvocates characterization that "...an attestation or binding notice avoids the liability issues raised by a CPE-to-LSE contract."³⁰ Reducing potential barriers for LSEs to self-show resources may help increase the volume of local capacity self-shown to the CPE, thereby providing the CPE a greater opportunity to meet its multi-year local RA obligations.

PG&E has significant concerns with the potential rigidity of a contract developed through a public stakeholder process in the ever-evolving RA market. MRP cites the demand response auction mechanism ("DRAM") pilot process as precedent for this type of public contract development process; however, the DRAM contracts developed through the public stakeholder process have required significant revisions and updates and have appeared to favor developers with shortfalls in performance mechanisms. PG&E

²⁸ MRP Phase 1 Opening Comments, pp. 7-10.

²⁹ *Initial Phase 1 Proposals of Pacific Gas and Electric Company (U 39 E) Regarding Central Procurement Entity Structure and Process*, dated December 13, 2021 ("PG&E Initial Phase 1 Proposals"), p. 4.

³⁰ CalAdvocates Phase 1 Opening Comments, p. 11.

does not believe leveraging a public stakeholder process to establish a standardized contract allows the CPE the flexibility to quickly adapt contractual terms to reflect a changing market and does not believe that a standard contract will best serve any stakeholder in the CPE process. As such, the Commission should reject MRP's request and instead eliminate the use of contractual agreements to document shown resources, as proposed by PG&E in its PG&E Initial Phase 1 Proposals.

D. The Commission Should Adopt PG&E's Confidentiality Proposal

To begin, PG&E agrees with SCE's opening comments that CPE information that is confidential cannot be shared with market participants.³¹ CalCCA's comments suggest that this is problematic because "market participants are the parties best suited and most inclined to solve the problems with the CPE framework,"³² and the Environmental Parties' comments suggest that there has been some "failure to provide publicly available information" that must be "remedied" in order for stakeholders to have "any meaningful information as to how the loading order and disadvantaged communities considerations were integrated into procurement."³³ Fortunately, as confirmed by SCE,³⁴ non-market participants such as the Environmental Parties can obtain access to confidential information upon execution of a non-disclosure agreement, and the Commission has a well-developed market participant reviewing representative process in place to ensure appropriate access and review of confidential information on behalf of market participants, such as CalCCA. The existing reviewing representative process is readily available to market participants to facilitate their access to and review of CPE confidential information in an appropriate manner. If CalCCA has not done so already, PG&E encourages it and other market participants to avail themselves of the process approved by the Commission for this purpose.

³¹ SCE Phase 1 Opening Comments, p. 11.

³² CalCCA Phase 1 Opening Comments, p. 4.

³³ Environmental Parties Phase 1 Opening Comments, p. 6.

³⁴ SCE Phase 1 Opening Comments, p. 11.

PG&E reiterates that its confidentiality proposal will not prevent stakeholders from obtaining access to CPE confidential information or reviewing such information as necessary, in connection with this proceeding or otherwise, through the Commission's approved processes. Rather, it will provide clear direction to all parties as to how CPE confidential information should be treated going forward.

In addition to its more general comments suggesting that CPE confidential information should be made public, CalCCA's comments also specifically address PG&E's request that the Commission adopt PG&E's proposal for confidential treatment of CPE data and information.³⁵ CalCCA first noted PG&E's proposal for the Commission to treat contracts and power purchase agreements as confidential for a period of the later of three years from delivery start or one year after execution.³⁶ CalCCA argued that, consistent with Decision 06-06-066 (which does not clearly apply to the CPE),³⁷ while the contracts themselves may be protected, the Commission should clarify that CPE contract summaries must be made public, including counterparty, resource type, location, capacity, expected deliveries, delivery point, length of contract and online date.³⁸ CalCCA appeared to imply that such "contract summary" information cannot be maintained by the Commission as confidential due to Decision 06-06-066 and that PG&E's proposal to keep the information confidential is somehow inconsistent with Decision 06-06-066. Likewise, the Environmental Parties stated that "'market-sensitive' data under Section 454.5(g) of the Public Utilities Code applies to a narrow category of information 'with the potential to affect the market for electricity in some way,'" and argued that because "it is unlikely that inclusion of general information related to many CPE contracts would impact the market," the general information cannot be kept confidential.³⁹ CalCCA's and the Environmental Parties' arguments fail to recognize, however, that Decision 06-06-066/Section 454.5(g) of the Public Utilities Code provide only one basis for entities to

³⁵ PG&E Initial Phase 1 Proposals, pp. 15-21.

³⁶ CalCCA Phase 1 Opening Comments, p. 13; PG&E Initial Phase 1 Proposals, Attachment A, p. A-1.

³⁷ PG&E Initial Phase 1 Proposals, pp. 15-18.

³⁸ CalCCA Phase 1 Opening Comments, p. 13.

³⁹ Environmental Parties Phase 1 Opening Comments, p. 7.

request confidential treatment of market-sensitive information from the Commission. PG&E's proposal more holistically draws on all relevant legal bases applicable to CPE confidential information (e.g., trade secret laws) to create a clear framework in Attachment A to the PG&E Initial Phase 1 Proposals for parties to reference with respect to CPE confidentiality issues.

As PG&E explained in detail in the PG&E Initial Phase 1 Proposals:

D.06-06-066 expressly recognizes that “[m]arket [s]ensitive’ [i]nformation [i]s [d]ifferent [f]rom ‘[t]rade [s]ecrets.’” The Commission explained that trade secret law and Section 454.5(g) provide independent bases for protecting confidential information. Under the Uniform Trade Secrets Act, trade secrets consist of:

[I]nformation, including a formula, pattern, compilation, program, device, method, technique, or process, that: (1) [d]erives independent economic value, actual or potential, from not being generally known to the public or to other persons who can obtain economic value from its disclosure or use; and (2) [i]s the subject of efforts that are reasonable under the circumstances to maintain its secrecy.

Thus, to the extent that information submitted by an entity qualifies as a trade secret, the entity has an independent basis on which to claim confidentiality when submitting the information to the Commission.⁴⁰

As a result, the Commission may maintain information as confidential in accordance with applicable law if the entity submitting the information to the Commission demonstrates that the material qualifies as a protectable trade secret. This is true for all entities, even if the information is covered under the Decision 06-06-066 matrix for other purposes.⁴¹ If the information qualifies as a trade secret in

⁴⁰ PG&E Initial Phase 1 Proposals, pp. 17-18 (citations omitted).

⁴¹ As described in the PG&E Initial Phase 1 Proposals, given that the CPE's procurement is not pursuant to an approved procurement plan in connection with Section 454.5 of the California Public Utilities Code, and D.06-06-066 appears to apply to market sensitive information submitted by investor-owned utilities to the Commission only if the market sensitive information is contained in or resulting from proposed or approved procurement plans, including power purchase agreements and related submissions, under Section 454.5 of the California Public Utilities Code, PG&E believes that the underlying legal basis supporting confidentiality related to D.06-06-066 may not be adequate to protect CPE information in the event of a California Public Records Act or Freedom of Information Act Request. As a result, PG&E believes that additional applicable bases for confidential treatment of

connection with a particular use case, it can also be protected under the independent legal basis for protection of trade secrets, which is what PG&E has proposed for the CPEs.

Because public disclosure of “contract summary” information (i.e. counterparty, resource type, location, capacity, expected deliveries, delivery point, length of contract and online date) could likely disclose the CPE’s portfolio (also referred to herein as the CPE’s “position”) in the various local areas,⁴² and that information derives independent economic value from not being known to the public (because the CPE’s position information could be used by the public to determine the CPE’s procurement needs and result in potentially adverse effects on the market by impacting bidding behavior for capacity that has not yet been procured, among other things) and is the subject of efforts by PG&E CPE that are reasonable under the circumstances to maintain its secrecy, it qualifies as a legally protectable trade secret as described in the PG&E Initial Phase 1 Proposals.⁴³ Thus, the CPE is entitled under applicable law to request confidential treatment of the information, and parties are wrong to suggest that PG&E’s proposal is inconsistent with Decision 06-06-066. PG&E urges the Commission to reject CalCCA’s unfair request to limit the CPE to requesting confidentiality protections under Decision 06-06-066. Instead, the Commission should recognize in its final decision that information submitted by PG&E to the Commission related to the CPE that qualifies under any applicable legal basis for confidentiality protections under California law can be protected.

information submitted by PG&E to the Commission related to the CPE should be specified by the Commission in a decision in this proceeding, as described in the PG&E Initial Phase 1 Proposals, with the specific proposed treatment of types of CPE information outlined in Attachment A thereto.

⁴² This information could disclose the CPE’s position for a number of reasons, including the fact that many resources are owned by special purpose entities that are easily identifiable by name, capacity located in particular local areas could be easily identified by resource type or capacity details, the location/delivery points of all of the resources could disclose the CPE’s position in a particular local area, and the period of deliveries/contract terms could disclose the CPE’s position over time.

⁴³ PG&E Initial Phase 1 Proposals, p. 19.

As explained by PG&E previously,⁴⁴ PG&E understands that defining confidentiality protections for the CPE is complex given various interests, and, therefore, rather than claiming confidentiality for all CPE-related trade secret information going forward (as it is entitled to do under the law), PG&E has proposed a balanced and thorough proposal for adoption by the Commission to create transparency and provide clear guidance to the CPE and parties as to how CPE information should be treated. PG&E urges the Commission to adopt its balanced approach outlined in Attachment A to the PG&E Initial Phase 1 Proposals, as modified in accordance with the next paragraph of these reply comments, to avoid further disagreements and controversy surrounding this issue.

In commenting on Attachment A to the PG&E Initial Phase 1 Proposals, CalCCA observed that it “is not clear what the forecasted requirements and allocations are that PG&E is proposing to keep confidential”⁴⁵ under the “Forecasted RA Requirements” item. PG&E agrees with CalCCA that modification is needed with respect to this item. PG&E clarifies that its proposal does in fact designate PG&E CPE’s RA requirements and allocations adopted by the Commission three years forward as public information under the “Portfolio” category; however, PG&E understands how the “Forecasted RA Requirements” item could cause confusion when viewed with other items in its proposal. Therefore, PG&E recommends removing the “Forecasted RA Requirements” item within Attachment A to the PG&E Initial Phase 1 Proposals to align with PG&E’s original intent.

Again, PG&E urges the Commission to adopt its balanced approach outlined in Attachment A to the PG&E Initial Phase 1 Proposals, as modified above.

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⁴⁴ *Id.*, pp. 19-21.

⁴⁵ CalCCA Phase 1 Opening Comments, p. 13.

E. The Commission Should Not Adopt a System RA Waiver Process and Should Instead Encourage LSEs to Take Proactive Measures to Mitigate Procurement Uncertainty

In its December 13, 2021 proposals, CalCCA recommended that the Commission “consider waiving system and flexible RA penalties for LSEs whose procurement was impacted by CPE procurement shortfalls,” positing that “uncertainty created by the failed CPE procurement impacts LSEs’ ability to comply with their procurement requirements.”⁴⁶ PG&E has consistently opposed, and continues to oppose, unnecessary system RA waivers that will likely serve only to jeopardize system reliability and undermine the tenet of the RA program. This position was echoed by CalAdvocates, which pointed out that waivers “would threaten the enforcement capacity of the RA program and pose a risk to system-wide grid reliability.”⁴⁷

Furthermore, CalAdvocates stated: “LSEs can take active steps within the existing CPE procurement process to reduce their own planning uncertainties. If LSEs are worried about uncertain RA credit allocations stemming from the CPE procurement process, those uncertainties may be mitigated by self-showing any local resources they own or have under contract to the CPE.”⁴⁸ PG&E agrees. Nothing prohibits LSEs from taking procurement measures before the CPE solicitation process and subsequently self-showing those local resources to meet their system and, if applicable, flexible RA obligations. Thus, LSEs can proactively take measures now to reduce procurement uncertainties. Consequently, the Commission should avoid implementing a new, unnecessary, and potentially harmful system RA waiver.

F. PG&E’s RA Timeline Proposal is an Equitable Means for the CPEs and LSEs to Complete Procurement Activities

The Commission should reject proposals by parties to modify the CPE procurement timeline in ways that would unduly impact the ability of the CPE to procure local RA. For example, Shell Energy North America (US), L.P. d/b/a Shell Energy Solutions (“Shell Energy”) asserted that “[e]ach LSE should

⁴⁶ *California Community Choice Association’s Phase 1 Proposals in Response to the Assigned Commissioner’s Scoping Memo and Ruling*, dated December 13, 2021 (“CalCCA Phase 1 Proposals”), p. 14.

⁴⁷ CalAdvocates Phase 1 Opening Comments, p. 5.

⁴⁸ *Id.*, pp. 5-6.

have at least four months from the time of the CPE credit allocation to conduct its final system and flexible RA capacity procurement.”⁴⁹ Constructing an appropriate procurement timeline necessarily involves trade-offs. PG&E agrees that the ability of the CPE to effectively execute procurement must be weighed against offering reasonable time to LSEs to allow them to procure; however, permitting LSEs to have four full months of notice would egregiously constrain CPE procurement timelines and negatively impact the volume and quality of CPE procurement. The Commission should carefully consider these trade-offs and avoid adopting any proposals which fail to consider both priorities.

In its December 23, 2021 new proposals, PG&E proposed a modified RA timeline that leaves LSEs and the CPE with comparable amounts of time in which to complete their necessary procurement.⁵⁰ This proposed timeline offers the most reasonable balance of the trade-offs discussed above and was supported by the CAISO and SCE.⁵¹ While PG&E appreciates SCE’s support on this issue, PG&E disagrees that its timeline proposal is only suitable as an interim solution. PG&E’s proposed timeline offers the most reasonable balance of certainty for all parties and should be adopted by the Commission as an equitable solution going forward.

G. The Commission Should Reject Proposals to Reconsider a Residual Procurement Framework

CalCCA proposed that the Commission consider “wholesale modifications to the CPE framework,” including revisiting its own residual model, which was rejected in D.20-06-002.⁵² Similarly, Calpine proposed implementing a residual model, “in which resources do not need to be shown to count.”⁵³ While not explicitly calling for reconsideration of the residual model, the CAISO proposed that

⁴⁹ *Opening Comments of Shell Energy North America (US), L.P. d/b/a Shell Energy Solutions on Phase 1 Proposals*, dated January 4, 2022 (“Shell Energy Phase 1 Opening Comments”), p. 4.

⁵⁰ *New Phase 1 Proposals of Pacific Gas and Electric Company (U 39 E) Regarding Central Procurement Entity Structure and Process*, dated December 23, 2021 (“PG&E New Phase 1 Proposals”), p. 5.

⁵¹ SCE Phase 1 Opening Comments, p. 6; CAISO Phase 1 Opening Comments, p. 4.

⁵² CalCCA Phase 1 Proposals, pp. 3, 15.

⁵³ *Initial Phase 1 Proposals of Calpine Corporation*, dated December 13, 2021 (“Calpine Phase 1 Proposals”), p. 5.

the Commission re-assign the local RA requirements to LSEs that have made a commitment to voluntarily commit self-procured local resources to the CPE under the hybrid procurement framework.⁵⁴ Like PG&E,⁵⁵ MRP concluded that the CAISO proposal would effectively turn the hybrid procurement model into a residual procurement model.⁵⁶ PG&E also notes MRP's observation that CAISO's proposal "has the potential to undermine any purported collective benefits of the hybrid model,"⁵⁷ which was adopted as the most efficient and equitable means for achieving all of the objectives outlined in Section 380(h) of the California Public Utilities Code.

SCE's opening comments urge the Commission to reject Calpine's proposal to use a residual approach to procuring local resources, explaining that the Commission "has already fully and finally decided that issue in D.20-06-002, holding that a residual procurement proposal cannot address all the known challenges identified in D.19-02-022."⁵⁸ AReM's opening comments also strongly oppose all proposals related to reconsideration of the residual model at this time.⁵⁹ While PG&E does not agree with AReM's understanding that the scope of Phase 1 is limited to the four issues on page 3 of the Scoping Memo,⁶⁰ PG&E agrees that reconsideration of the residual model in Phase 1 would be unsupported by the record in this proceeding and wholly inconsistent with the Commission's decisions to date. Again, instead of considering these residual proposals, PG&E recommends that the Commission adopt its CAM-based approach for self-showing LSEs as outlined in Section II.A above.

⁵⁴ *Phase 1 Proposals of the California Independent System Operator Corporation*, dated December 23, 2021, p. 4.

⁵⁵ PG&E Phase 1 Opening Comments, pp. 10-14.

⁵⁶ MRP Phase 1 Opening Comments, pp. ii, 15-16.

⁵⁷ *Id.*, p. 16.

⁵⁸ SCE Phase 1 Opening Comments, p. 4.

⁵⁹ AReM Phase 1 Opening Comments, pp. 6-7.

⁶⁰ The Scoping Memo states: "the issues within the scope of Phase 1 are to consider modifications to the CPE structure and process, including . . ." Scoping Memo, p. 3. PG&E interprets the word "including" on page 3 to mean "including, but not limited to," with the four issues listed after the word "including" providing some examples of potential "modifications to the CPE structure and process." PG&E notes that, while PG&E proposed bifurcation of CPE issues into two tracks, with resolution of the most critical issues by March 2022, in its initial comments on the proceeding and at the prehearing conference, the Scoping Memo does not bifurcate consideration of CPE issues and instead sets all CPE issues for Phase 1.

H. The Commission Should Direct the Bundled Procurement Arm of the IOU to Submit a Tier 2 Advice Letter Proposing an Alternative to the Levelized Fixed Cost Bidding Requirement

In its opening comments, CalAdvocates expressed support for PG&E’s proposal to consider alternatives to the current “levelized fixed cost” requirement, agreeing that “ratepayers are harmed by CPE solicitation inefficiencies and improper pricing of IOU-owned resource offers.”⁶¹ PG&E agrees and notes lessons learned during the first CPE solicitation indicating that this rule, while initially understandable in order to prevent self-dealing, is largely incompatible with the existing CPE procurement framework, is duplicative of the competitive neutrality rules and provisions as outlined by SCE, and is preventing the bundled procurement arm of the IOU from maximizing value for all customers. PG&E believes that replacing the “levelized fixed cost” requirement – which could be interpreted as generally inclusive of all attributes of the resource – with a more suitable alternative that parses out the individual attributes of the resource (e.g., RA capacity, renewable energy, and its renewable energy credits, etc.) will benefit all customers, including departing load customers, and strongly suggests that the Commission adopt PG&E’s proposal and direct the bundled procurement arm of the IOU to file a Tier 2 advice letter proposing its methodology for bidding IOU-owned resources and contracted resources into the CPE solicitation process.

While CalAdvocates supported PG&E’s proposal, it did so with one caveat, “that any changes to the levelized fixed cost requirement should apply to both CPEs in the same manner” and that “[t]he IOUs that run the two CPEs should jointly file a tier 2 advice letter proposing changes to the levelized fixed cost requirement...”⁶² While PG&E understands the desire to maintain parity, it does not believe that standardizing IOU bidding methodologies is in the best interests of customers and has the potential to violate anti-trust law. The bundled procurement arms of the respective IOUs maintain different portfolios, with distinct contracts and distinct portfolio needs and goals best served by distinct bidding

⁶¹ CalAdvocates Phase 1 Opening Comments, p. 8.

⁶² *Ibid.*

methodologies. The Commission should evaluate suitable alternatives within that context and allow the bundled procurement arm of the respective IOUs to individually submit advice letters detailing methodologies most well-suited to their respective portfolios.

Similarly, CalCCA suggested that the methodology should be contemplated and proposed by parties to this proceeding.⁶³ PG&E disagrees. It is unreasonable for other market participants to dictate how the bundled procurement arm of the respective IOUs should be bidding into the CPE solicitation process, which would be the purpose of handling this matter through a formal proceeding. This is clearly anti-competitive and could place the IOUs at a competitive disadvantage, especially in PG&E's service territory where the majority of the local resources are not owned or contracted for by PG&E. PG&E believes that its proposed Tier 2 advice letter process is an appropriate venue for approval of the IOU-developed bidding methodology.

I. The Commission Should Reject Calpine's Proposals that Mandate Specific Implementation Details of the CPEs' Competitive Solicitation Processes

In their Phase 1 proposals, Calpine submitted ten distinct proposals for the Commission's consideration.⁶⁴ MRP's opening comments also recommend the adoption of "several" of Calpine's proposals, including, among others: (1) allowing the CPE to determine reasonableness of offers based on prevailing prices for system RA capacity, (2) discouraging CPEs from requiring LSEs to provide detailed data on unit operating characteristics for self-shown capacity, (3) discouraging CPEs from imposing restriction on the term of capacity offers that are not required by the CPE decision, (4) requiring the CPEs to use industry standard tolling contracts, and (5) enabling the CPE to solicit offers for system capacity and engage in local for system swaps.⁶⁵ PG&E opposes the adoption of these proposals and notes that

⁶³ CalCCA Phase 1 Opening Comments, pp. 10-11.

⁶⁴ Calpine Phase 1 Proposals pp. 1-16.

⁶⁵ MRP Phase 1 Opening Comments, pp. 19-20.

PG&E CPE is open to market feedback and considering modifications to these implementation items for PG&E CPE's upcoming annual solicitation in 2022.

PG&E is concerned that mandating these implementation details may not be in the best interests of customers. For example, there may be instances in which soliciting shorter-term offers from the market is the most direct and cost-effective manner to ensure the CPE executes its responsibility to procure the entire 3-year forward local RA requirement. The CPE's ability to achieve its goals may be undermined if it is not given the discretion to determine the appropriate term lengths to best meet its procurement obligations. Furthermore, requiring the explicit adoption of product types such as swaps could have unintended consequences as this would require the CPE to serve as a market broker between LSEs and/or suppliers. This could involve brokering negotiations between market participants that extend the scope of the CPE. Again, while PG&E is open to market feedback and exploring ways to encourage participation into the CPE process, it cautions the Commission on adopting such explicit requirements surrounding implementation details.

III. CONCLUSION

PG&E appreciates the opportunity to submit its reply comments on Phase 1 Proposals and urges the Commission to adopt its Phase 1 proposals in the PG&E Initial Phase 1 Proposals and the PG&E New Phase 1 Proposals, as well as its recommendations herein.

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Respectfully submitted,
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